



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

KOESTNER BERTANI LLP  
1924 GALAXY DRIVE  
NEWPORT BEACH, CA 92660

**COPY MAILED**

MAY 02 2007

**OFFICE OF PETITIONS**

In re Application of  
David A. Holly  
Application No. 10/665,694  
Filed: September 18, 2003  
Attorney Docket No. 1016.P001 US

**DECISION ON PETITION**

This is a decision on the petition, filed September 18, 2006, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before July 21, 2006, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed April 21, 2006.

Petitioner asserts that the Notice dated April 21, 2006 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

1. a statement from practitioner stating that the Notice was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and
3. a copy of the docket record where the nonreceived Notice would have been entered and docketed had it been received must be attached to and referenced in the practitioner's statement.

*See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).*

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The Issue fee and publication fee has been received.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

This matter is being referred to the Publishing Division for further processing.



Irvin Dingle  
Petition Examiner  
Office of Petitions

cc: Koestner Bertani LLP  
18662 MacArthur Blvd.  
Suite 400  
Irvine, CA 92612